APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

DR. ALLEN DAHL; LYLE EINHAUS; DR. FRANK J. RIGOS; KENNETH ROGSTAD; DR. RICHARD CLARK; DENNIS G. HAGEN; SELMER THORP; and DR. CHARLES R. WOLFE,

Plaintiffs,

v.

THE REPUBLICAN STATE COMMITTEE; and C. MONTGOMERY JOHNSON, Chairman,

Defendants.

Civil No. 7557
Memorandum Order

This is a suit by certain officials of the Republican Party, who reside in the four most populous counties of the State of Washington, challenging the constitutionality of R.C.W. 29.42.020. They bring this action in their individual capacities and as representatives of certain classes of voters in those counties.

The complaint attacks the constitutionality of R.C.W. 29.42.020, which provides that the state committee of a major political party shall be composed of one committeeman and one committeewoman from each county. The gravamen of the complaint, however, is the allegation that the voters of the four most populous counties in the state are under-represented at the state convention, which meets to elect Washington's delegates to the Republican National Convention, and for other purposes.

Plaintiffs assert that by reason of this under-representation they are denied a fair voice in the choice of the Republican nominees for the Presidency and Vice Presidency of the United States; and that such constitutes a denial of equal protection under the Fourteenth Amendment, as interpreted in *Baker v. Carr*, 369 U.S. 186, 32 S.Ct. 691, 7 L.ed2d 663 (1962); *Gray v. Sanders*, 372 U.S. 368, 83 S. Ct. 801, 9 L.ed.2d 821 (1963); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.ed.2d 506 (1954) and other cases.

The number of delegates to represent each county at the state convention is not determined by statute, but in accordance with a "formula," established by the Republican State Central Committee. In establishing the machinery for apportioning delegates to the state convention among the several counties, the committee is exercising the power granted by R.C.W. 29.42.010 which provides:

> "Each political party organization shall have the power to: . . . (3) Elect delegates to conventions, state and national; . . ."

Thus, the true thrust of the complaint is that the Republican State Central Committee, in establishing that formula, has deprived plaintiffs and those whom they represent of the equal protection of the laws, in violation of the Fourteenth Amendment. If we assume arguendo that plaintiffs are correct, their claim that disproportionate representation at a state convention to elect delegates to the national convention is a denial of equal protection is at best an assault upon the constitutionality of the manner

in which the state committee has exercised the power delegated to the party organization by the Washington State Legislature, and not an attack upon the constitutionality of the statute which establishes the state committee. So viewed, it is clear that the complaint raises no genuine challenge to the constitutionality of a state statute, and the jurisdictional requirements for a three-judge court, as set forth in 28 U.S.C. Sec. 2281, are absent. *Phillips v. U.S.*, 312 U.S. 246, 61 S.Ct. 480, 85 L.ed. 800 (1941).

It should be noted, however, that this court does not, at this time, pass upon the constitutional issue raised by plaintiffs: namely, whether the so-called "one man-one vote" principle is applicable to state nominating conventions. We hold only that the facts alleged, even if proved, would not support the relief which plaintiffs seek, the declaration that R.C.W. 29.42.020 is unconstitutional.

The complaint is structured entirely as a challenge of the statute, and the relief sought could not be granted unless this court found the statute unconstitutional. Accordingly, the motion to dismiss the complaint for failure to state a claim is granted. If plaintiffs desire to amend they shall make such intention known by notice in writing served and filed within five days from the date hereof. If plaintiffs so elect they are granted leave to file an amended complaint within 15 days thereafter.

If plaintiffs elect not to amend, a decree of dismissal may be presented upon three days' notice. Otherwise this memorandum order shall serve as the order of the court.

Dated this 12 day of April, 1968.

/s/ GILBERT H. JERTBERG
United States Circuit Judge

/s/ WILLIAM J. LINDBERG
United States District Judge

/s/ W. T. BEEKS
United States District Judge

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Plaintiffs,

v.

THE REPUBLICAN STATE COMMITTEE; and C. MONTGOMERY JOHNSON, Chairman,
Defendants

Civil No. 7557
Memorandum Order

Plaintiffs' original complaint stated a single cause of action, seeking a declaration that R.C.W. 29.42.020 was unconstitutional and that an injunction be issued restraining actions taken pursuant to that statute. Plaintiffs also requested that a three-judge court be convened to hear the case, as required by 28 U.S.C. Sec. 2281 in cases where such relief is sought.

This three-judge court was convened by order of February 19, 1968. By memorandum order of April 12, 1968, this court held that, ". . . the complaint raises no genuine challenge to the constitutionality of a state statute, and the jurisdictional requirements for a three-judge court, as set forth in 28 U.S.C. Sec. 2281, are absent. . . . Accordingly, the motion to dismiss the complaint for failure to state a claim is granted."

In the same order, however, this court made clear that it did not purport to pass upon the question of whether there had been an unconstitutional exercise of powers granted by a state statute; and granted plaintiffs leave to file an amended complaint. In so doing, it was the court's intention to furnish plaintiffs a clean-cut ruling against their contention that the state statute is unconstitutional, which plaintiffs could appeal to the Supreme Court if they so elected. This court also provided plaintiffs with the alternative of filing an amended complaint limited to the issues upon which this court had expressly declined to rule. Such issues could only be litigated before a single United States District Judge, inasmuch as they did not assert a challenge to the constitutionality of a state statute.

The court's order was apparently misunderstood in this respect. In the amended complaint filed by plaintiffs, Count I re-asserts in essence substantially all of the allegations of the original complaint, while only Count II is directed to the issues left open by this court's memorandum order. Both Counts request that a three-judge court be convened to hear the case.

Defendants now move to strike and dismiss each Count of the amended complaint on the ground that there is no

jurisdiction for a three-judge court, and upon the further ground that the amended complaint fails to state a claim upon which relief may be granted.

The motion to strike the amended complaint and each of the causes of action therein stated on the ground that there is no jurisdiction for a three-judge court is granted. This being so, this court has no jurisdiction to entertain the motion to dismiss for failure to state a claim upon which relief may be granted. Plaintiffs are granted leave to file a seconded amended complaint, which shall be limited to the question of whether the Republican State Central Committee has exercised its statutory powers in a manner which deprives plaintiffs of constitutional rights, and, which shall be heard by a single-judge court. If plaintiffs desire so to amend, they shall make such intention known by notice in writing served and filed within five days from the date hereof. If plaintiffs so elect they are granted leave to file a second amended complaint within fifteen days thereafter.

If plaintiffs elect not to amend, a decree of dismissal may be presented upon three days' notice. Otherwise this memorandum order shall serve as the order of the court.

Dated this 4th day of June, 1968.

/s/ GILBERT H. JERTBERG
United States Circuit Judge

/s/ WILLIAM J. LINDBERG
United States District Judge

/s/ W. T. BEEKS
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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DR. ALLEN DAHL; LYLE EINHAUS; DR. FRANK J. RIGOS; KENNETH ROGSTAD; DR. RICHARD CLARK; DENNIS G. HAGEN; SELMER THORP; and DR. CHARLES R. WOLFE, *Plaintiffs,* v. THE REPUBLICAN STATE COMMITTEE; and C. MONTGOMERY JOHNSON, Chairman, *Defendants.*	**Civil No. 7557** **Judgment and Decree of Dismissal** **Three Judge Court**

This matter came on for hearing on March 23, before the undersigned judges of a Three Judge District Court on defendant's motion to dismiss the complaint for failure to state a claim. The court having heard argument of coun-

sel, having read the record and file herein, and having entered a memorandum order dated April 12, 1968, granting defendants' motion to dismiss the complaint for failure to state a claim but giving plaintiffs leave to file an amended complaint; and having further entered its memorandum order dated June 4, 1968, striking the amended complaint and each of the causes of action therein stated; in accordance with the aforesaid memorandum orders dated April 12 and June 4, 1968, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiffs' motion to dismiss the complaint for failure to state a claim should be and the same hereby is granted and said complaint is dismissed with prejudice.

DATED this 15th day of July, 1968.

/s/ GILBERT H. JERTBERG
United States Circuit Judge

/s/ WILLIAM J. LINDBERG
United States District Judge

/s/ W. T. BEEKS
United States District Judge

Presented by:
FREDRIC C. TAUSEND

Approved as for form and for entry,
Notice of presentation waived:
EDWARD N. LANGE

APPENDIX B

Revised Code of Washington:

29.42.010 Authority—Generally. Each political party organization shall have the power to:

(1) Make its own rules and regulations;

(2) Call conventions;

(3) Elect delegates to conventions, state and national;

(4) Fill vacancies on the ticket;

(5) Provide for the nomination of presidential electors; and

(6) Perform all functions, inherent in such an organization: *Provided,* That in no instance shall any convention have the power to nominate any candidate to be voted for at any primary election.

29.42.20 State committee. The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chairman and vice chairman who must be of opposite sexes.

APPENDIX C

28 United States Code:

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, § 121, 71 Stat. 637.

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. As amended May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349.

§ 2281. Injunction against enforcement of State statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

42 United States Code:

§ 1993. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

APPENDIX D

United States Constitution:

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.